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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-490

ANTHONY VAN DE WALLE

VS.

AMERICAN CYANAMID COMPANY

PETITION FOR WRIT OF CERTIORARI TO REVIEW THE DECISION OF THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1973

NO. _____

ANTHONY VAN DE WALLE

VS.

AMERICAN CYANAMID COMPANY

PETITION FOR WRIT OF CERTIORARI TO REVIEW THE DECISION OF THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

Anthony Van De Walle, the petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals, Fifth Circuit, entered April 23, 1973, rehearing denied on May 18, 1973.

CITATIONS TO OPINIONS BELOW

The opinion of the Judge of the United States District Court, Eastern District of Louisiana, Judge Peter T. Fay, sitting ad-hoc, in Section D, printed in Appendix C hereto, which is unreported. The opinion of the United States Court of Appeals, Fifth Circuit, printed in Appendix B hereto, is reported at _____ F 2d _____. The order of the United States

Court of Appeals, Fifth Circuit, denying the application for rehearing, printed in Appendix A hereto, was not reported.

JURISDICTION

The order of the United States Court of Appeals, Fifth Circuit, denying the Petition For Rehearing was denied on May 18, 1973, as printed in Appendix A hereto. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

(1) Whether or not a Federal Appellate Court in a diversity action (28 U.S.C. 1332) can substitute its own conservative opinion in place of and in spite of a liberal holding of the Louisiana State Supreme Court (Kern v. Southport Mill, 174 La. 432, 141 So. 19) (1932) concerning employee Workmen's Compensation claims against employers pursuant to LSA-R.S. 23:1021, et seq.

(2) At the same, may a Federal Appellate Court substitute its own particular, narrow inferences of fact in place of a Federal District Court Judge, who made positive Findings of Fact pursuant to F.R.C.P. 52, in favor of the employee.

STATUTES INVOLVED

(1) Louisiana Workmen's Compensation Act, LSA-R.S. 23:1021, et seq.

(2) Rule 52 of the Federal Rules of Civil Procedure

STATEMENT OF THE CASE

(1) Nature of the Case.

The employee, Anthony Van De Walle, brought this action against the employer, American Cyanamid Company, pursuant to the Louisiana Workmen's Compensation Act (LSA-R.S. 23:1021, et seq.) as a result of injuries he sustained in an automobile accident that occurred approximately 11 P.M., on the night of Sunday, August 23, 1970, while, as an employee, he was proceeding from his home in Violet, Louisiana, to the employer's place of business, in Waggaman, Louisiana, a distance of approximately thirty-five (35) miles. At the time of the accident, the employee was crossing the Huey P. Long Bridge, over the Mississippi River, approximately ten miles from the employer's plant, when it became necessary for the employee to stop his car because of a flat tire. While the employee was in the process of attempting to repair his tire, he was struck by a vehicle driven by one Cleveland Perrer, resulting in serious fractures of both legs and multiple injuries. The employee sought disability benefits under the Louisiana Workmen's Compensation Act, alleging he sustained an injury within the meaning of the Louisiana Workmen's Compensation Act, while working within the scope of his employment.

(2) Course of Proceeding.

Anthony Van De Walle filed a complaint on or about May 14, 1971. The employer answered on July 19, 1971. Pre-trial conference was held on January 14, 1972. A trial was had on April 7, 1972, when and where twenty-three (23) paragraphs of stipulations between the parties, together with four (4) depositions and a number of exhibits were

submitted to the Court. After reviewing the twenty-three (23) stipulations of fact, four (4) depositions and exhibits, the lower Court ruled for the plaintiff/appellant and on April 12, 1972 entered judgment for the plaintiff/appellant, against the defendant/appellee, awarding Workmen's Compensation Benefits to the employee/appellant. On April 21, 1972, the defendant/appellee filed a motion for a new trial or to amend the findings of fact, which were denied by the Court below and on May 10, 1972, a final judgment for the lower Court was entered in favor of the appellant/employee. Thereafter, on May 31, 1972, the employer, American Cyanamid Co., filed a Notice of Appeal to the Fifth Circuit Court of Appeals, urging that the employee, was not working within the scope of his employment pursuant to the Louisiana Workmen's Compensation Act, LSA-R.S. 23:1021 et seq., at the time of the automobile accident, herein involved. On April 23, 1973, the United States Court of Appeals vacated the judgment of the District Court and remanded the case back to the District Court with directions to enter judgment for the employer/appellee. (Appendix B) A Petition For A Rehearing was filed May 7, 1973. Thereafter, on May 18, 1973, the Petition For Rehearing as filed by the appellant/employee was denied. Thereafter, on or about August 15, 1973, the Honorable Lewis F. Powell, Jr., Associate Justice of the Supreme Court of the United States, granted the appellant, Anthony Van De Walle, an extension of time, including the date of September 16, 1973 in which to file a Petition For A Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

Can a Federal Appellate Court in a diversity action, pursuant to 28 U.S.C. 1332, ignore the substantive law of the Louisiana

Supreme Court in Kern v. Southport Mill, (1932) 174 La. 432, 141 So. 19, pertaining to the Louisiana Supreme Court liberal view recognizing exception to the general rule that transportation to and from work by an employee is not covered under the Workmen's Compensation Act. The Louisiana Supreme Court, as early as 1932, in Kern v. Southport Mill, supra, announced its liberal and broad guideline concerning these exceptions to the general rule. At page 141 Southern, 20, the Louisiana Supreme Court stated, in pertinent part:

> "As the statute provides for compensation to be paid to an employee injured 'in the course of his employer's trade, business or occupation in the following hazardous trades, businesses and occupations,***' it is to the nature of the 'trade, business or occupation' of the employer, and not to the particular work in which the employee may be engaged when injured, that we must look to see if the statute applies. ...
>
> It remains therefore only to examine whether plaintiff's injuries were sustained while he was 'performing services arising out of and incidental to, his employment.'
>
> (2,3) Services 'arise out of' and are 'incidental to' an employment, whenever the employment calls for just such services. And whenever the employer calls upon the employee to render any particular service, he, at least (that is to say, the employer himself), is in no position any longer to deny that the services thus requested arise out

of and are incidental to the employment. Otherwise, by what right has the employee been called upon to perform them? (EMPHASIS OURS.)

Accordingly, the question whether or not the services being rendered by the employee, at the time when he is injured, arise out of and are incidental to his employment, cannot be raised when the employee has been given special instructions to perform the particular services in which he was engaged at the time he was injured, but only when the employee has undertaken such service on his own initiative as being actually or presumably within the scope of his duties. ... (EMPHASIS OURS.)

(5) But that alone is not enough for recovery; the statute further requires that the accident must also 'arise out of' the employment. By which is meant, that the accident must be the result of some risk to which the employee is subjected in the course of his employment and to which he would not have been subjected had he not been so employed.

But time, place, and circumstance must determine this. When the ill-fated Titanic foundered in the spring of 1912, all persons aboard her was situated exactly alike as to time and place; but they were not all situated alike as to circumstances. Those who traveled for pleasure were present of their own free choice alone; those who traveled for business, whether their

> own or that of another, were there of necessity. And, when one finds himself at the scene of accident, not because he voluntarily appeared there but because the necessities of his business called him there, the injuries he may suffer by reason of such accident 'arise out of' the necessity which brought him there, and hence, 'arise out of' his employment, if it so be that he was employed and his employment required him to be at the place of the accident at the time when the accident occurred. (EMPHASIS OURS.)
>
> (6) In determining, therefore, whether an accident 'arose out of' the employment, it is necessary to consider only this: (1) Was the employee then engaged about his employer's business and not merely pursuing his own business or pleasure; and (2) did the necessities of that employer's business reasonably require that the employee be at the place of the accident at the time the accident occurred?"

The rule announced in Kern v. Southport Mill, supra, is a liberal rule, requiring only (1) special instructions to perform a particular service; (2) whether or not the employee was where he was at the time of the accident, because of the requirements and the nature of the business of the employer.

Of Course, the Fifth Circuit, Court of Appeals, on page 5 of their opinion, has acknowledged that Kern v. Southport Mill, supra, is the leading case in the State of Louisiana, concerning this point. However, notwithstanding, the acknowledgment, the

holding has been ignored, and instead, the Fifth Circuit Court of Appeals has reinterpreted Kern v. Southport Mill, supra, as indicated on page 5, of the Fifth Circuit Court of Appeals' opinion:

> "...as stated in the leading case of Kern v. Southport Mill, an employee is covered by the Act if when injured he was 'then engaged about his employer's business and not merely pursuing his own business or pleasure.' From these broad guidelines Louisiana courts have fashioned a more specific rule to the effect that an accident occurring while the employee is en route to or from work is not usually considered as within the course of his employment. See Boutte v. Mud Separators, Inc., 236 So.2d 906, 908 (La. App. 3d Cir. 1970)."

This is a misunderstanding of the Louisiana Workmen's Compensation Rule with reference to exceptions of the general rule. The general rule for Louisiana Workmen's Compensation is to the effect that "accidents taking place in the course of an employee going to and from work are not covered within the meaning of the Louisiana Workmen's Compensation Act, as indicated in Boutte v. Mud Separators, Inc., 236 So. 2d 906, writ refused 240 So.2d 241, 256 La. 894 (1970) and Welch v. Travelers Ins. Co., 225 So. 2d 623, writ refused 227 So.2d 954, 254 La. 854 (1969) and Gardner v. Industrial Indemnity Co., 212 So.2d 452 (1968).

But Kern v. Southport Mill, supra, is concerned with broad guidelines with reference to exceptions to the general rule, and

contrary to the interpretation of the Fifth Circuit Court of Appeals, Kern v. Southport Mill, supra, does not restrict these exceptions of the general rule to only incidents involving positive payment of transportation for the use of the personal vehicle. This is not the holding of Kern v. Southport Mills, supra. This is not the holding Welch, Boutte and/or Gardner. On the contrary, it was the thesis of the employer, adopted by the Fifth Circuit Court of Appeals.

It is error of the Fifth Circuit Court of Appeals to assume that the District Courts and Circuit Courts for the State Courts of Louisiana, have reduced the holding of Kern v. Southport Mill, supra, to a "rule...apparently grounded upon the premise that the employment relationship is usually suspended from the time the employee quits work to go home until he resumes his job the following day". Correctly stated, the general rule is to the effect that movement to and from work as a general rule is not covered within the scope of the Louisiana Workmen's Compensation Act. Kern v. Southport Mill, supra, treats of the exceptions and outlines broad guidelines concerning the exceptions. Instead, the broad guidelines of Kern v. Southport Mill, supra, are not "reduced" by Gardner v. Industrial Indemnity Co., 212 So. 2d 452, but instead, Gardner, supra, is specifically concerned with the one specific issue as to whether or not mere payment of a dollar towards use of a vehicle by the employer to the employee bring any accident of the employee coming or going to work within the exception of the general rule, in Gardner, supra, the Louisiana First Circuit Court of Appeals, held negatively, but in analyzing the case, it must be remembered Gardner was only involved in the regular transportation to and from work and had nothing else to allege a cause of action to

come within the scope of the Workmen's Compensation Act, save the dollar per day paid towards his vehicle. On the contrary, the Third Circuit Court of Appeals for the State of Louisiana, was apparently, itself, very liberal in interpreting Boutte v. Mud Separators, Inc., 236 So.2d 906 (La. App. 3d Cir. 1970) in allowing compensation to Boutte for his Eastern Sunday night trip from a dance to his employer's place of business, in order to pick up a truck to be used the next day. In fact, in order to evaluate the liberality of the Third Circuit, the following excerpts from 230 So. 907 should be read:

> "...On Saturday, April 5, 1969, plaintiff worked at his employer's shop in New Iberia until noon. His wife met him at the shop in their personal automobile and they went to lunch and then engaged in other personal affairs Saturday afternoon and returned to their home Saturday night, leaving the truck at the shop.
>
> The next day was Easter Sunday. Plaintiff and his wife had family visitors at their home and then left about 2:30 p.m. They went first to New Iberia and then to a dance hall near Abbeville where they drank, danced and finally had something to eat about 6:30 p.m. During this period of time plaintiff testified he drank about five beers but no whisky. While at the dance hall, plaintiff called the answering service of his employer to notify them of his whereabouts. When they left, plaintiff asked his father, who lives in New Iberia, to drive him there and to his employer's shop

> in order to pick up his truck for work the next day. On the way they stopped and drank another beer and then went to the shop where plaintiff and his wife got in the truck and started driving toward their home. On the way home, they were involved in a head-on collision and plaintiff received the injuries at issue. ..."

In the Findings of Fact and Conclusions of Law, as found by the Court below in favor of Anthony Van De Walle, there were these Findings of Fact:

(1) ...

(2) The regular working hours for the plaintiff were five (5) days a week, Monday through Friday, commencing at 7:45 a.m., and continuing to 4:15 p.m.

(3) Sunday was not a regular day for the work for the plaintiff. Plaintiff was scheduled to go on his vacation after 4 p.m., on Friday, August 21, 1970.

(4) Commencing on August 22, 1970, American Cyanamid Company ... was involved in what was termed a "turnaround" which means there was a temporary shutdown in the particular unit of the plant so that major repairs could be effected. This "turnaround" involved a 24 hour day schedule as opposed to the regular 8 hour a day schedule.

(5) The plaintiff participated in over-

time work pertaining to this "turn-around" on Saturday, August 22, 1970, one day before his accident. On the Saturday, August 22, 1970, arrangements were made for Anthony Van De Walle to return Sunday night, at midnight, to work from midnight to noon, the next day, August 24, 1970. It was anticipated that he would have worked a straight 12 hours after reporting for midnight, August 22, 1970.

(6) ...

(7) The testimony of Mr. William P. Roberts, Jr., Mr. Lee Joseph Gonzales and the plaintiff indicate that the arrangements as to what particular man should be on duty at midnight was a loose arrangement. There was no particular need to have Mr. Gonzales rather than Mr. Van De Walle or Mr. Van De Walle rather than Mr. Gonzales.

(8) ...

(9) The situation of the "turnaround" had an emergency atmosphere about it in that it was not a regular, everyday procedure. It was a procedure that may last three days, four days, five days, six days, seven days or ten days. There was no particular designed amount of time allowed for this "turnaround".

(10) Twelve hour shifts arranged for this "turnaround" was a loose arrangement having a nature of informality. Scheduling of work within the "turn-around" was not fixed. Instead, it was flexible, depending upon variables

what repairs were discovered in the course of the "turnaround", the availability of personnel and the amount of time estimated for each discovered item that needed repair or service.

(11) The procedure of servicing, repairing and refurbishing gear and equipment was not such that you could make any accurate plans, on these items had to be discovered as repairs and servicing was commenced upon; likewise, the estimated time for accomplishing this activity was not something that was fore-planned in detail prior to attempting the "turnaround". The fact that it was not known whether or not the "turnaround" would take three days, four days, five days, six days or seven days indicates there were unknown variables to encounter and deal with as the "turnaround" advanced.

From the foregoing, the Court drew an inference and concluded that pursuant to the "Standard Practice Instruction" as submitted by the employer, that the trip of Anthony Van De Walle should have been covered as an emergency trip. Pursuant to Rule 52, of the Federal Rules of Civil Procedure, these Findings of Fact should not be set aside "unless clearly erroneous". The mere difference of opinion of the Fifth Circuit Court of Appeals with the trier of fact should not suffice for the substitution of the Appellate opinion of fact in place of the trial judge's opinion of the facts.

By stipulation of parties in the Amendment of the Pre-Trial Order, prior to the

April 12, 1972 trial, as well as the Findings of Fact of the lower Court, it was agreed and found as a matter of fact that regular working hours for Anthony Van De Walle were five days a week, Monday through Friday, commencing at 7:45 a.m., and continuing until 4:15 p.m., daily. When Antonly Van De Walle was asked to forego his vacation and work twelve hours on Saturday, August 22, 1970 and further come back before midnight on Sunday, August 23, 1970, he was specifically asked to do work that came outside the scope of his regular work hours. Moreover, when Antonly Van De Walle had an accident, on the Huey P. Long Bridge, twenty-five (25) miles from his house, ten (10) miles en route to his employer's place of business, at 11 p.m., on Sunday, April 23, 1970, he met the specific test outlined in Kern v. Southport Mill, supra: (1) He was engaged about his employer's business and merely pursuing his own business pleasure; and (2) the necessities of the employer's business reasonably required that Anthony Van De Walle be on the bridge, crossing the bridge, in order to get to the Fortier Plant, in Waggaman, Louisiana. In this respect, the appellant, Anthony Van De Walle, specifically refer to the Louisiana Supreme Court's opinion of Kern v. Southport Mill, at 141 So. 21:

> "The question whether or not the employee might have been injured in the same way, and even at the same place and time had he not been called there by the necessities of his employer's business, but had gone there only for his own pleasure or in pursuit of his own business, has nothing whatever to do with the case. It was his employer's business which called him to the place and time of the accident and not his own pleasure or business; and hence

his injuries arose out of his pursuit of his employer's business, and not out of his own business or pleasure.

In the final analysis, that is the sum and substance of the principle on which all compensation cases rests, notwithstanding the many words in which that principle has been wrapped up. It has been held that an employee is engaged about his employer's business whilst going to and coming from his employer's place of business, provided he pursued the usual and least hazardous means of reaching and leaving his employer's premises." (EMPHASIS OURS.)

CONCLUSION

For the foregoing reasons it is submitted that the Fifth Circuit Court of Appeals' holding, reversing the lower Court, is erroneous, so that the petitioner urges this Supreme Court of the United States to reverse the holding and judgment of the United States Court of Appeals for the Fifth Circuit or in the alternative, to grant to the petitioner a writ of certiorari.

Respectfully submitted,

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PROOF OF SERVICE

I, CHARLES R. MALONEY, an attorney for the petitioner and a member of the Bar of the Supreme Court of the United States, hereby certify that on this day, I served copies of the foregoing Petition for Writ of Certiorari on Mr. Ralph S. Johnson, counsel for respondent, by mailing a copy thereof, postage prepaid, addressed to his office, at Suite 520, 225 Baronne Street, New Orleans, Louisiana 70112.

Dated this 12th day of September, 1973.

CHARLES R. MALONEY

U. S. COURT OF APPEALS
FILED
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APPENDIX A

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 72-2406

ANTHONY VAN DE WALLE,
Plaintiff-Appellee,

versus

AMERICAN CYANAMID COMPANY,
Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of Louisiana

ON PETITION FOR REHEARING

(MAY 18 , 1973

Before GEWIN, SIMPSON and RONEY, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby Denied.

Appendix A

APPENDIX B

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 72-2406

ANTHONY VAN DE WALLE,
Plaintiff-Appellee,

versus

AMERICAN CYANAMID COMPANY,
Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of Louisiana

(April 23, 1973)

Before GEWIN, SIMPSON and RONEY,
Circuit Judges.

GEWIN, Circuit Judge: Late one Sunday evening in August 1970 Anthony Van De Walle was grievously injured in an accident which occurred while he was en route from his home to his place of employment. Alleging that his accident arose in the course of his employment, Van De Walle brought this diversity suit

Appendix - B

against his employer, American Cyanamid Company, seeking total and permanent disability benefits under the Louisiana Workmen's Compensation Act.[1] After a bench trial the district court awarded a substantial judgment in favor of Van De Walle from which American Cyanamid appeals. Since we cannot agree with the district court's application of the controlling law in reaching its decision that the accident which befell Van De Walle occurred in the course of his employment, we reverse.

On the date of his accident Van De Walle had completed approximately three years of service as a draftsman at American Cyanamid's chemical manufacturing plant in Waggaman, Louisiana. His residence was located in Violet, Louisiana, and he customarily drove the thirty-five miles to appellant's plant in his own car. Because the chemical manufacturing done at the Waggaman plant had a deleterious impact on the equipment used in the process, the plant could not function continuously for more than twelve months or so without undergoing a major overhaul. When a major overhaul became necessary, American Cyanamid would begin an operation known as a "turnaround" during which particular units of the plant would be temporarily shut down so that the equipment could be serviced and repaired.

As soon as a turnaround commenced, the plant's employees were required to switch from their regular eight hour a day work schedule to an around-the-clock

[1] LSA-R.S. 23-1021 *et seq.*

format under which each employee was on duty for a twelve hour shift. The scheduling of shifts was somewhat flexible in that each worker was informally consulted as to what hours he would prefer. Since American Cyanamid classified any work performed in addition to the requisite forty hours a week as overtime, part of each twelve hour shift in a turnaround was overtime work for which an employee was entitled to be paid at the standard time and a half rate. Once begun, a turnaround continued until all essential maintenance work was completed, usually a period of from seven to ten days. Thus turnaounds were in a sense extraordinary procedures of uncertain duration, but they were planned in advance and of necessity occurred with some regularity.

Ordinarily Van De Walle worked eight hours of the day, five days of the week, from Monday through Friday. But on the Friday preceding the Sunday evening in question, American Cyanamid began another turnaround at its Waggaman plant. Although Van De Walle's vacation had been scheduled to start after he finished work on Friday, he decided to forego it and accordingly arranged with his immediate supervisor and a co-employee named Gonzales to return at midnight to begin a twelve hour shift lasting until noon Saturday. On Saturday Van De Walle agreed to continue working the midnight to noon shift; however, he also made a special arrangement with Gonzales whereby he would relieve Gonzales an hour early on Sunday night at 11:00 p.m. As a result of the turnaround and his understanding with Gonzales, Van De Walle was en route to the Waggaman plant on Sunday night. A

flat tire forced him to stop his car while crossing a river bridge, and while repairing it, he was struck by another vehicle sustaining serious injuries.

At the time of Van De Walle's accident, American Cyanamid had in effect a policy of paying its personnel a travel allowance for unscheduled emergency trips to the plant. This policy was described in a "Standard Practice Instruction" which clearly stated that each employee was expected to provide his own transportation to and from the plant for his normal work schedule and for all previously scheduled overtime. Trips to and from the plant in a privately owned automobile were compensable if an individual was called in an emergency by his supervisor or department head and asked to report to the plant during off-scheduled hours. Although American Cyanamid did not pay its employees a travel allowance for trips to and from the plant during turnarounds and in spite of Gonzales' testimony that he did not turn in a travel voucher for his trips to the plant during this turnaround, the district court concluded that a turnaround was the kind of emergency contemplated by the "Standard Practice Instruction" and that under it Van De Walle had been entitled to travel expenses for his Sunday night trip to the plant. On this basis, and because Van De Walle would not have been on his way to work when the accident occurred but for the turnaround, the district court decided that the accident did arise in the course of his employment and awarded judgment in Van De Walle's favor.

Under the Louisiana Workmen's Compensation Act a worker is entitled to compensation if he is accidentally injured during the course of employment.[2] As stated in the leading case of *Kern v. Southport Mill*, an employee is covered by the Act if when injured he was "then engaged about his employer's business and not merely pursuing his own business or pleasure."[3] From these broad guidelines Louisiana courts have fashioned a more specific rule to the effect that an accident occurring while the employee is en route to or from work is not usually considered as within the course of his employment.[4] This rule is apparently grounded upon the premise that the employment relationship is usually suspended from the time the employee quits work to go home until he resumes his job the following day; during the off hours he is on his own.

But this rule is not without at least one well-established and pertinent exception which arises when the rule's underlying premise is absent. If the employer has assumed an interest in the transportation of his workmen to and from work because it serves some useful purpose of his other than simply having employees on the job, then the employment relationship is no longer confined to the job premises and may extend to travel to and from home.[5] Thus the cases hold

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[2]LSA-R.S. 23-1031.

[3]174 La. 432, 141 So. 19, 21 (1932).

[4]Boutte v. Mud Separators, Inc., 236 So.2d 906, 908 (La. App. 3d Cir. 1970).

[5]Gardner v. Industrial Indemnity Co., 212 So.2d 452, 455 (La. App. 1st Cir. 1968).

that when an employee is routinely furnished transportation to or from work as part of the employment agreement, he is covered by the Act if an accident befalls him during transportation.[6] The agreement to furnish transportation indicates that the worker is still on his master's business while traveling to and from work. This exception to the usual rule is available not only when the employer provides transportation as such but also when he pays a travel allowance in lieu thereof, and it matters not whether the transportation agreement is expressly stated or is merely implicit in the working arrangement.[7] But in no event is the exception applicable when the employment relationship does not encompass travel to and from work and the employer receives no special benefit from it. For the Act's purpose is to protect workers from the hazards that accompany their job and not to insure them against the common perils of life.[8]

Turning to the matter at hand, after carefully considering the record and the contentions of the parties, we are forced to conclude that we would abort the purpose of Louisiana's Workmen's Compensation Act were we to permit its coverage to be extended to Van De Walle's accident. It is undisputed that when injured

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[6] Welch v. Travelers Insurance Co., 225 So.2d 623, 626 (La. App. 1st Cir. 1969). *Accord* Boutte v. Mudd Separators, Inc., 236 So.2d 906, 908 (La. App. 3d Cir. 1970) and Gardner v. Industrial Indemnity Co., 212 So.2d 452, 455 (La. App. 1st Cir. 1968).

[7] Gardner v. Industrial Indemnity Co., 212 So.2d 452, 457 (La. App. 1st Cir. 1968).

[8] Gardner v. Industrial Indemnity Co., 212 So.2d 452, 455 (La. App. 1st Cir. 1968), *citing with approval* Tavel v. Bechtel Corp., 242 Md. 299, 219 A.2d 43.

he was en route to work. Based on its determination that under company policy Van De Walle was due a travel allowance for his trip, the district court held that his injuries were compensable under the exception to the general rule concerning travel to and from work. But American Cyanamid's "Standard Practice Instruction" without qualification states that a travel allowance is to be paid only for unscheduled emergency trips to and from the plant, and Van De Walle's Sunday night shift had been previously scheduled in informal discussions with his supervisor and Gonzales. Although the turnaround then in effect was undoubtedly not the routine operation, it was neither unfamiliar nor unexpected, and it can hardly be characterized as an "emergency" as that term is commonly used. The turnaround did nothing more than provoke a temporary change in the hours which the employees worked. It did not create an exception to the normal company policy under which employees were expected to provide their own transportation to and from work. The district court's ruling to the contrary was plain error.[8]

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[8]The district court found that:

> "The situation of a 'turn around' had an emergency atmosphere about it in that it was not a regular, everyday procedure. It was a procedure that may last three days, four days, five days, six days, seven days or ten days. There was no particular designated amount of time alloted for this 'turn around'. . . .
>
> • • • •
>
> The court finds that the 'turn around' activity that was being followed by the defendant, as interpreted by their own 'standard practice instruction' should have covered the travel allowance for the plaintiff as an emergency trip. The 'turn around' situation at the Fortier plant is such that it should fit the definition of 'emergency' as used within the standard practice instructions."

The only difference between the trip to the plant on which Van De Walle was injured and those he made while the plant was on its normal schedule is that the former was made on Sunday night. We cannot perceive any significance in this difference. Van De Walle was not entitled to travel expenses for his trip, and it was of no special unusual benefit to his employer. Turnarounds at the plant occurred at certain intervals when overhauling and repairs were necessary and the practice was considered a usual and normal requirement in the operation of the plant. Van De Walle was simply on his way to work, albeit at an odd hour. In these circumstances his case falls within the general rule that injuries sustained while en route to or from work are not within the course of employment. The judgment of the District Court is vacated and the case is remanded with directions to enter judgment for the appellant.

VACATED AND REMANDED WITH DIRECTIONS.

Adm. Office, U.S. Courts—Scofields' Quality Printers, Inc., N. O., La.

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

U. S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
APR 12 1972
FILED
BENJAMIN W. REISCH
CLERK

ANTHONY VAN DEL WALLE

vs.

AMERICAN CYANAMID COMPANY

CIVIL ACTION

No. 71-1338

SECTION "D"

= JUDGMENT =

This cause came on for trial by the Court, sitting without a jury, on April 7, 1972.

After hearing the pleadings and evidence, reading the depositions and listening to the arguments of counsel, the Court ruled in favor of the plaintiff; and,

On April 12, 1972, the Court issued its Findings of Fact and Conclusions of Law, wherein it directed the Clerk to enter judgment in accordance with said findings; accordingly;

IT IS ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of the plaintiff, Anthony Van De Walle, and against the defendant, American Cyanamid Company, as follows:

(a) For the payment of weekly compensation in the amount of $49.00 per week, to commence as of August 23, 1970, bringing all compensation payments, payable through to date, and to continue weekly at $49.00 per week as long as the plaintiff, Anthony Van De Walle, is disabled within the meaning of the Louisiana Workmen's Compensation Act (LSA-R.S. 23:1021, et seq.) with the right of the employer to challenge further disability payments six (6) months after the date of judgment, pursuant to the same Act (LSA-R.S. 23:1331).

(b) For the payment of reasonable medicals.

(c) For costs and legal interest.

Dated at New Orleans, Louisiana, this 12th day of April, 1972.

BENJAMIN W. REISCH, CLERK

APPROVED AS TO FORM:

UNITED STATES DISTRICT JUDGE

-ooo-

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